

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1970

No. 557

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UNITED STATES OF AMERICA,

*Appellant,*

—v.—

INTERNATIONAL MINERALS AND CHEMICAL CORPORATION

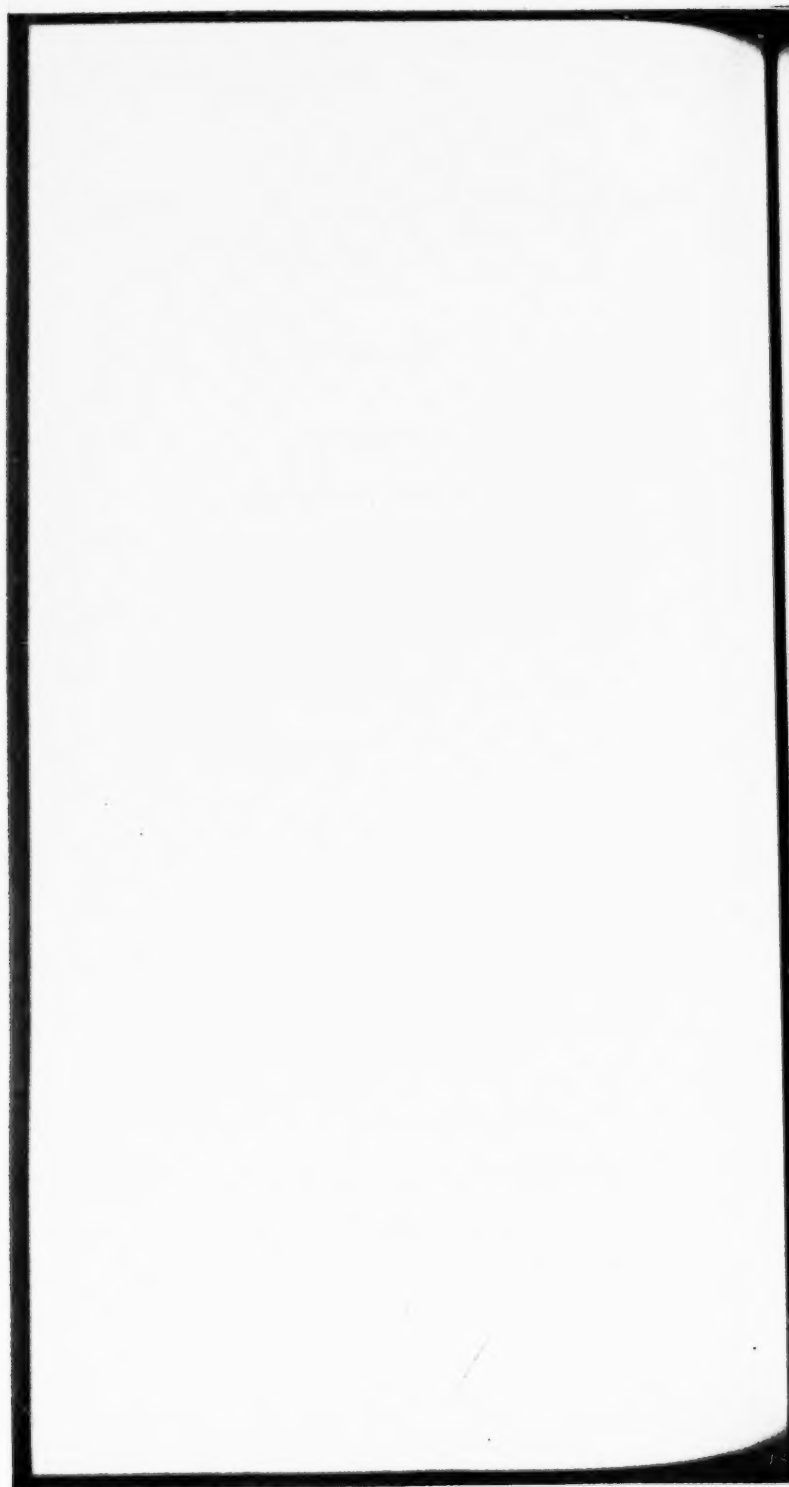
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CERTIFICATION FROM THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

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**THE UNITED STATES**

*vs.*

**INTERNATIONAL MINERALS & CHEMICAL CORP.**

**VIOLATION: 18:834—5 counts—failure to show proper classification of shipment as to contents, on shipping papers**

***For U.S.:***

Simon L. Leis

***For Defendant:***

Leonard D. Slutz  
900 Tri-State Building  
(621-3128)

**DOCKET ENTRIES**

STATISTICAL RECORD	COSTS
J.S. 2 mailed	Clerk
J.S. 3 mailed	Marshal
Violation	Docket fee
Title	
Sec.	

DATE	PROCEEDINGS
3/ 2/70	INFORMATION, filed by US Atty.
3/23/70	Case called for Arraignment by J. Porter—counsel here, cause cont'd for filing of motions.
3/23/70	Motion to Dismiss filed by deft, together with Memo in support of Mot. to Dismiss.
4/24/70	Memorandum opposing Defendants Motion to Dismiss, filed.
5/11/70	Memorandum of Decision & Order filed. Certified copies issued Counsel. Mot. to Dismiss is granted, and each count in the information is dismissed.
6/ 8/70	NOTICE OF APPEAL, filed by Pltf. United States —Cert. copies issued Leonard D. Slutz, Esq. & 6th Circuit Ct. of Appeals.

11616

## SYNOPSIS

The attached criminal information containing 5 counts, charges International Minerals & Chemical Corporation, defendant, a corporation, with offering for transportation dangerous articles without properly describing them on the shipping paper by name and/or classification, 49 C.F.R. 173.427.

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**PENALTY:** Not more than \$1,000 or imprisonment for not more than 1 year or both on each count, 18 U.S.C. 834

**NAME:** International Minerals & Chemical Corporation, 5401 Old Orchard Road, Skokie, Illinois 60076

**L&E:** 2-D-69-7

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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No. 11616

49 C.F.R. 173.427

18 U.S.C. 834

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,  
DEFENDANT

**INFORMATION**

**THE UNITED STATES ATTORNEY CHARGES:**

**COUNT 1**

On or about April 2, 1969 at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Jeffersonville, Indiana, to M. C. Tank Transport, a shipment of 40,000 gallons, Sulfuric Acid and did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

**COUNT 2**

On or about April 10, 1969, at Lockland in the State and Southern District of Ohio, Western Division, Inter-

national Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 2,000 gallons, Sulfuric Acid and did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

### COUNT 3

On or about April 15, 1969, at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 1 truckload, Sulfuric Acid and did knowingly fail to show on the shipping papers the proper name, Sulfuric Acid, and the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

### COUNT 4

On or about April 16, 1969, at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations

prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 2,000 gallons, Sulfuric Acid and did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

### COUNT 5

On or about April 18, 1969 at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Indianapolis, Indiana, to Ecoff Trucking, Inc., a shipment of 4,000 gallons, HFS Acid and did knowingly fail to show on the shipping papers the proper name, to wit, Hydrofluosilicic Acid and the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

WILLIAM W. MILLIGAN  
United States Attorney

/s/ Robert A. Steinberg  
ROBERT A. STEINBERG  
Assistant United States  
Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

No. 11,616

49 C.F.R. 173.427  
18 U.S.C. 834

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,  
DEFENDANT

MOTION TO DISMISS

The defendant moves that each count of the Information herein be dismissed on the ground that it does not state facts sufficient to constitute an offense against the United States.

A memorandum in support of this motion is attached hereto.

/s/ Leonard D. Slutz  
LEONARD D. SLUTZ  
Nichols, Wood, Marx &  
Ginter  
900 Tri-State Building  
Cincinnati, Ohio 45202

/s/ Harold E. Spencer  
HAROLD E. SPENCER  
Belnap, McCarthy, Spencer  
& Hardy  
One North La Salle Street  
Chicago, Illinois 60602



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

No. 11,616

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,  
DEFENDANT

MEMORANDUM OF DECISION AND ORDER

There is pending for decision a motion to dismiss the five-count information which started this prosecution March 2, 1970. The motion is made pursuant to Rule 12 (b) (2) F. R. Crim. P.

Title 18 U.S.C., section 834(a) commands the Interstate Commerce Commission (hereinafter I.C.C.) to formulate regulations for safe transportation of explosives and other dangerous articles. Pursuant to that section the I.C.C. promulgated the following regulations:

(a) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in Section 172.5 of this chapter and by the classification prescribed in Section 172.4 of this chapter, and may add a further description not inconsistent therewith. 49 C.F.R., section 173.427.

Section 834(f) of 18 U.S.C. provides:

Whoever *knowingly* violates any such regulation shall be fined not more than \$1,000 or imprisoned not more than one year, or both . . . (emphasis added).

The five counts contained in the information are bot-tomed on the above regulation in its relation to section 834(f) in that they charge the defendant with know-

ingly failing to show on its shipping papers the required classification, or name and classification, of the property shipped. The information does not, however, charge that the defendant knowingly violated the above regulation and such an omission, defendant contends, requires dismissal. In other words, the defendant asserts that there is a vast difference between intending not to do the act(s) which a statute commands and, on the other hand, purposely not doing such an act but with the added ingredient of a consciousness that it is illegal not to so do.

On the basis of *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337 (1952); *St. Johnsbury Trucking Co., Inc. v. United States*, 220 F. 2d 393 (1 Cir., 1955); *United States v. Chicago Express Inc.*, 235 F. 2d 785 (7 Cir., 1956); *United States v. Deer*, 131 F. Supp. 319 (E.D. Wash. N.D. 1955); *United States v. Chicago Express, Inc.*, 172 F. Supp. 613 (E.D. Ill., 1959), aff'd 273 F. 2d 751 (7 Cir., 1960) we find that knowledge of violating the above I.C.C. regulation is an essential element of the crime charged under 18 U.S.C. section 834(f).

Hence, failure to make such an allegation(s) in the information warrants granting defendant's motion to dismiss. *Rudin v. United States*, 254 F. 2d 45 (6 Cir., 1958).

Accordingly the motion is granted, and each count in the information is dismissed.

/s/ David S. Pate  
Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

No. 11,616

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,  
DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that the United States of America, plaintiff in the above captioned case, hereby appeals to the United States Court of Appeals for the 6th Circuit from the final Order granting defendant's Motion to Dismiss the Five-Count Information entered on May 11, 1970.

WILLIAM W. MILLIGAN  
United States Attorney

/s/ Norbert A. Nadel  
NORBERT A. NADEL  
Assistant U. S. Attorney

Of Counsel:  
JOHN A. PULLINS

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Cincinnati, Ohio 45202

No. 20,519

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,  
DEFENDANT-APPELLEE

MOTION TO CERTIFY CASE TO THE SUPREME COURT  
OF THE UNITED STATES

The United States of America, Appellant, moves the Court to certify the above entitled appeal to the Supreme Court of the United States, pursuant to Section 3731, Title 18, United States Code, the appeal taken being from a decision of the District Court dismissing the information against the Defendant, which decision is based upon a construction of Section 834(f), Title 18, United States Code, upon which the information is founded.

WILLIAM W. MILLIGAN  
United States Attorney

GRANTED

Peck, J.

/s/ Norbert A. Nadel  
NORBERT A. NADEL  
Assistant U. S. Attorney

CERTIFICATE OF SERVICE

This is to certify that copies of the within Motion to Certify Case to the Supreme Court of the United States and Memorandum in Support thereof were mailed this 16th day of July, 1970 to Counsel for Defendant-Appellee, Leonard D. Slutz, Nichols, Wood, Marx & Ginter, 900 Tri-State Building, Cincinnati, Ohio 45202, and Harold E. Spencer, Belnap, McCarthy, Spencer & Hardy, 20 N. Wacker Drive, Chicago, Illinois 60606.

/s/ Norbert A. Nadel  
NORBERT A. NADEL  
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

No. 11,616

49 C.F.R. 173.427  
18 U.S.C. 834

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,  
DEFENDANT

MEMORANDUM OF DEFENDANT IN SUPPORT  
OF MOTION TO DISMISS

This memorandum is submitted by defendant in support of its motion to dismiss the information filed herein.

The information filed herein purports to charge defendant with five violations of Title 18 U.S.C. § 834. That section provides that the Interstate Commerce Commission (whose functions in this connection were transferred to the Secretary of Transportation by PL 89-670, effective October 15, 1966) shall formulate regulations for the safe transportation of explosives and other dangerous articles. Sub-section (f), the statutory provision here directly involved, provides in applicable part as follows:

Whoever knowingly violates any such regulation shall be fined not more than \$1,000 or imprisoned not more than one year, or both; . . .

The regulation which defendant is charged with violating appears in 49 C.F.R. § 173.427, and presently reads as follows:

(a) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in § 172.5

of this chapter and by the classification prescribed in § 172.4 of this chapter, and may add a further description not inconsistent therewith. Abbreviations must not be used. The total quantity by weight, volume, or as otherwise appropriate, must be shown.

. . .

The offense proscribed by the statute is "knowingly" violating an applicable regulation. The information, however, does not charge defendant with knowingly violating the regulation, but only with knowingly failing to show on the shipping papers the required classification, or name and classification, of the property shipped, the failure to state which constitutes a violation of the regulation. This distinction is an exceedingly important one since the Counts have held that proof of such facts as alleged by the United States in this information does not constitute an offense under the statute.

Count 1 of the information filed herein alleges that the defendant, International Minerals & Chemical Corporation, (IMC) offered for transport in interstate commerce from Lockland, Ohio, to Jeffersonville, Ind., by motor carrier a shipment of 40,000 gallons of sulfuric acid "and did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834)." Counts 2 and 4 are in substantially the same language. In all three instances the shipper spelled out in full on the bill of lading the name "sulfuric acid", but failed to state that it was a corrosive liquid. The requirement of the regulation that the shipping classification be shown on the bill of lading is of relatively recent origin, having been added by an amendment published in the Federal Register on September 21, 1967, to become effective December 1, 1967.

Counts 3 and 5 are in substantially the same language but allege that the shipper did knowingly fail to show on the shipping papers the proper name and the required classification of the said property. Count 3 involved sulfuric acid which was shown on the bill of lading as "Sul Acid". Count 5 involved a shipment of

hydrofluosilicic acid which was shown on the bill of lading as "HFS Acid".

It is not pertinent at this time to go into the facts which would constitute IMC's defense. It is sufficient to say only that, while technical violations of the regulation did occur, IMC is convinced that it would be able to show to the satisfaction of the court that IMC did not "knowingly" violate the regulation but, on the contrary, took a great number of steps and precautions to prevent violations of the regulations, in spite of which technical violations of the regulation did occur.

Prior to the present codification of the statute, the provision which IMC is charged with violating, which now appears in section 834 of title 18, formerly appeared in title 18 section 835. Decisions of the Supreme Court of the United States and of various Courts of Appeals and United States District Courts have specifically held that the statute in question is not of the *malum prohibitum* class, but is of the *malum in se* class, and that, in order to establish a violation of the statute, the United States must establish the existence of a specific criminal or culpable intent to violate the regulation concerned. *Boyce Motor Lines v. United States*, 342 U.S. 337 (1957); *St. Johnsbury Trucking Company v. United States*, 220 F.2d 393 (5th Cir. 1955); *United States v. Deer*, 131 F.Supp. 319 (E.D. Wash. 1955). In the *Boyce* case, at page 342, the Supreme Court pointed out that the statutory provision in question "punishes only those who knowingly violate the Regulation". The Supreme Court interpreted that as imposing a "requirement of the presence of culpable intent as a necessary element of the offense".

In other cases the courts have drawn a clear distinction between the statute here involved governing the transportation of hazardous materials and such regulations as pertain to the hours of service of drivers, filling out drivers' logs, etc., which latter class of cases have been held to be cases of the *malum prohibitum* type, in which knowingly doing the act charged is sufficient to charge an offense without alleging and proving a culpable or wrongful intent to violate the regulation con-

cerned. See, for example, *Steere Tank Lines, Inc. v. United States*, 330 F.2d 719, at 722-723 (5th Cir., 1964).

In light of the above cases, it is quite evident that charging the defendant with knowingly abbreviating sulfuric acid or hydrofluosilicic acid or knowingly failing to state on the bill of lading that they are a corrosive liquid, either of which could occur without a culpable or criminal intent to violate the regulation, is not the same as alleging that defendant "knowingly" violated the regulation, which, as stated, has been interpreted by the courts as requiring proof of a specific culpable or criminal intent to violate the regulation.

WHEREFORE, for the reasons herein set forth, defendant prays that each count of the information filed in this cause be dismissed for failure to state facts constituting an offense against the United States.

Respectfully submitted,

/s/ Leonard D. Slutz  
LEONARD D. SLUTZ  
Nichols, Wood, Marx &  
Ginter  
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/s/ Harold E. Spencer  
HAROLD E. SPENCER  
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& Hardy  
One North La Salle Street  
Chicago, Illinois 60602



**SUPREME COURT OF THE UNITED STATES****No. 557, October Term, 1970****UNITED STATES, APPELLANT****v.****INTERNATIONAL MINERALS & CHEMICAL CORPORATION**

**Appeal from the United States District Court for the  
Southern District of Ohio.**

**The statement with respect to jurisdiction in this case  
having been submitted and considered by the Court,  
probable jurisdiction is noted.**

**January 11, 1971**